

~~CONFIDENTIAL~~

MACCORDS-RE

11 December 1967

EVALUATION REPORT

PROCESSING OF VIET CONG SUSPECTS

1. (U) PURPOSE: The Reports and Evaluation Division was directed by the MACORDS, CORDS, to evaluate the processing of VC suspects (VCS) from time of initial apprehension, through judicial review, to final detention and/or release. The objective of this evaluation was to obtain a clear picture of what happens to the mass of Vietnamese who are apprehended as VCS, interrogated, judged, imprisoned and/or released from a procedural and/or mechanical point of view.

2. (U) APPROACH:

a. This study was conducted by Mr. John G. Lybrand during the period 23 September to 23 November 1967. Mr. Lybrand was assisted by Mr. Do Minh Nhat, A Vietnamese evaluator.

b. The first phase of the study was devoted to obtaining all available information at the Saigon level on this subject area. Specific coordination was effected with PSD, RDC, PAD/USAID, ICEX (SIDE), MACV, JAG, OSA and the Ministry of Justice.

c. The second phase was devoted to a field examination of the subject. Because limitations of time and resources precluded an exhaustive survey, an intensive and selective study was conducted. A list of the organizations and individuals contacted is at Annex A.

~~CONFIDENTIAL~~
UNCLASSIFIED

GROUP 4
Downgraded at three year
intervals. Declassified 12
years after date of origin.

CONFIDENTIAL

3. (C) BACKGROUND:

a. There are three MACV directives, one USARV and one Vietnamese Joint General Staff Directive that provide specific guidance for the handling of Prisoners of War (POW) and general guidance for the handling of all other detainees. There was no evidence that detailed instructions on the handling of VCS had ever been issued by either US or GVN headquarters. Advisors therefore must rely on whatever prior knowledge they may have acquired in service schools or previous assignments to advise their counterparts, if indeed they advise on this subject at all. It should be noted that CORDS, III CTZ, has been gathering data relative to the disposition of detainees and has drafted a directive which, if implemented, will make all III CTZ Province Senior Advisors (PSA) responsible to the Commanding General, II Field Force, Vietnam (II FFV) for maintaining data relating to detainees.

b. The civil court system in Vietnam does not handle VC defendants. The judicial processing is the responsibility of various military tribunals.

4. (C) DETAINEE PROCESSING:

a. Apprehension: VCS may be apprehended by several different types of operations but all can be grouped into three major categories.

(1) Civil operations by National Police (NP), Provincial Recon Units (PRU), etc.

(2) VN Military operations.

(3) US/FWMAF operations.

b. Interrogation:

(1) Immediately after initial detention the detainee is usually interrogated so that the capturing unit may ascertain any information that may be of immediate tactical use. This phase of interrogation normally

CONFIDENTIAL

CONFIDENTIAL

will last from 1-12 hours. At this time the detainee may be judged to be an innocent civilian and released to his own custody. If the detainee is not thought to be an innocent civilian but rather a civil defendant he will normally be taken to the next higher headquarters for further interrogation and classification. It should be noted that a suspect classified as a POW is to be handled in accordance with the rules of the Geneva Convention; these individuals have not been considered in this evaluation. At this point the processing phase loses all coherence. If detained by a US unit (the 1st Marine Division is used as an example), the detainee may be escorted to Division Headquarters and thus bypass both district and provincial authorities. After 4-72 hours, if the detainee is thought to be important, he will be escorted to the III MAF Combined Interrogation Center in Danang and remain there, in some instances for as long as two months. The term "Combined Interrogation Center" is a misnomer. This center is staffed exclusively by US Marine interrogators who have received Vietnamese language training. There are no Vietnamese interrogators present.

(2) If the detainee is apprehended by an ARVN multi-province operation he might go to province, division, or corps for his next interrogation.

(3) If the detainee should be captured by a PRU, usually he is returned to province for further interrogation and classification.

(4) Because of the variety of channels through which a detainee may move before finally coming to trial, the processing of VCS does not lend itself to proper supervision. Furthermore, the confusion which results from this lack of uniformity facilitates corruption by GVN

CONFIDENTIAL

CONFIDENTIAL

officials at various levels. The subject of graft in the system will be discussed more thoroughly in the following paragraphs.

b. Judicial Processing:

(1) The three systems that are responsible for the legal processing of detainees are quite adequate in concept; the procedures usually are rapid and efficient once the individual's case comes before a tribunal. The main time lag between initial detention and final sentence comes prior to the detainees actual trial.

(2) The three systems responsible for the judicial processing of VCS are:

(a) Regular Military Court: This court consists of five members; four military assessors and one presiding judge. The function of presiding judge is assigned to:

1. A judge of the Court of Appeals for the trial of military personnel with the grade of Major or lower, or equivalent, and VCS.
2. The presiding judge is selected from personnel of the Court of Appeals in the judicial district where the military court is located.
3. The alternate presiding judges are selected from field grade officers of the Judge Advocate Generals Corps who must be Judge Advocate or Assistant Judge Advocate at military tribunals, hold the "Licentiate of Law" degree and have at least five years of service seniority.

(b) Military Field Court:

1. There are four Military Field Courts, one in

CONFIDENTIAL

CONFIDENTIAL

each of the four Corps Tactical Zones (CTZ), which try offenses against the national security. In addition, a decree, Law #C49/67, has established that four additional mobile Military Field Courts are to be organized as needed, in the various CTZ. However, these four additional courts have not been established. The above mentioned courts prosecute civilians who are detrimental to state security, as defined in Ordinance number 47, 21 August 1956.

2. There is one significant difference between sentences of the Field Court and those handed down by the Regular Military Court. Field Court sentences are final; appeals or petitions to the Court of Cassation will be rejected. Sentences handed down by the Regular Military Court may be appealed. The Field Court's sentence, if not capital punishment, will be executed immediately after the trial. In cases of capital punishment, the Government Commissioner will immediately gather all documents relating to the case and prepare a petition for mercy within ten days following the trial, even when the convicted does not request mercy. This petition for mercy is forwarded to the President of the Republic; capital punishment can be carried out only after he acts upon the petition.

(c) Provincial Security Committee:

1. By order of the Chairman of the Central Executive Committee, those who are regarded as dangerous to the national defense or the public safety, may be banished to a detention camp or forced to reside in a specified area for a period of two years, with the possibility of indefinite extension at two year intervals.

CONFIDENTIAL

CONFIDENTIAL

2. In current practice, the Provincial Security Committee is composed as follows:

- a. Province Chief (President)
- b. Sector Commander (if province chief is a civilian).
- c. Judge of the Civilian Court
- d. NP representative
- e. Military Security representative
- f. Province S-2

3. There is one such committee per province, and its procedures may vary from province to province. However, the purpose of the committee is to review the facts and circumstances relating to the defendant and ascertain whether sufficient evidence exists for detention or trial. The proceedings are initiated by the Military Security member, who prepares and submits a file to the province chief. Normally, the province chief will convoke the committee to consider the case within one month after receiving the file but the undersigned found cases throughout the country where the defendant has remained in custody for periods ranging from one month to one year, without a review of their case. In Long An Province, according to the province S-2, the Security Committee has invoked sentences of two to five years without reconvening the committee at the end of the initial two year period. If there appears to be sufficient evidence to warrant prosecution, the case may be forwarded to the appropriate military tribunal for trial. If the committee should find that there is insufficient evidence to hold the defendant he is released and the Central Security

CONFIDENTIAL

CONFIDENTIAL

Committee is informed. The Central Security Committee is located at the national level and is composed of the Minister of Security, or his representative; Director General of the National Police, or his representative; the province chief concerned; and the commander of the correction center concerned, if the suspect is confined. If, however, the committee determines that the suspect needs retraining for political or security reasons, the committee then forwards its recommendation for detention for a specific period of time, banishment, residence restrictions, etc.

5. (C) IMPRISONMENT: There are a total of thirty-seven provincial jails, four national prisons, and three military stockades (temporary internment), where a civil defendant can be interned. In addition, when a district jail is available and the province that administers that district has insufficient space for a prisoner, a civil defendant may be placed in the district jail until such time as the provincial jail has adequate space. Experience has shown that once a man is sentenced to a district jail, he will more than likely serve out his entire term at that location.

6. (C) RELEASE:

a. Innocent Civilian: An innocent civilian can be discharged from the VCS processing system at any level after his initial detention. For instance, the capturing unit may feel that certain members of a group of detainees should be released on completion of a search and sweep operation. A district or province chief may determine that there is insufficient evidence available to hold a detainee and release the individual to his own custody. As can be seen, a district or province chief has the authority to release a VCS without consulting any higher authority. In addition, there are no

CONFIDENTIAL

CONFIDENTIAL

controls or checks which hold either of these officials accountable for VCS in their custody. For example, in Operation Dragnet in Binh Dinh Province, in excess of 1500 VCS have been released as innocent civilians out of a total of 1700 detained. Over 1300 of those detained were captured and given an initial classification by Vietnamese NP, Police Field Force or Military Police. (Similarly, in Pleiku Province, search and sweep operations by the 4th Infantry Division (US) from 1 January to 1 April 1967 netted some 165 suspects, of which only seven were retained by the GVN). The official responsible for the release of many of the Dragnet suspects was CPT Lop, District Chief, Hoi Nhon District. From a study of the released and retained list by LTC Duffield, CORDS, II Corps, it was noted that among the VCS who were released, some had been classified by the capturing unit as VC Hamlet Chief, VC Subhamlet Chief, Tax Collector, village guard, guerrilla platoon leader, guerrilla squad leader and guerrilla. Among those individuals retained were low level VCS who had been classified as panji stick maker, forced laborer, rice donator and sympathizer. The suspects who were released apparently were members of an organization with the means to affect reprisals or to buy the release of captured members of sufficient importance. Those retained, in many cases, appeared to be those who had neither the money to bribe their way free nor sufficient importance to the VC organization to warrant an outlay of money for their release.

b. Normal Release: Once sentenced, an individual can serve his penalty and gain release at its expiration if the court has no reason to extend confinement, or if the individual has completed his time and the court feels that he is ready to take his place in society once more.

CONFIDENTIAL

CONFIDENTIAL

c. Amnesty: To commemorate the recent inauguration, the Chief of State granted an amnesty decree for some 11,710 prisoners. These prisoners had been classified by the GVN as 6270 convicts, 1120 political prisoners and 4320 VCS. After visiting various prisons throughout Vietnam and talking with the prison administrators and their advisors, this evaluator does not believe that most of the wardens know exactly how many, what type, or who they have as inmates in their prisons. In Quang Tri Province, for example, the prison commander could not give the exact population of his prison nor a competent classification of the prisoners present. The release of 12,000 prisoners may merely added strength to the depleting ranks of the Viet Cong.

7. (C) GENERAL OBSERVATIONS:

a. Anyone captured in a combat act or anyone admitting to the act is classified as a POW. Individuals apprehended performing an act of sabotage or terrorism are classified as civil defendants and are tried either by a Regular Military Court or a Military Field Court, where the maximum sentence is death. The maximum sentence is seldom invoked, however, and there is no minimum sentence. In September 1967, three civilians were apprehended while attempting to blow up a police precinct headquarters in Saigon. The cell leader was given a six-month sentence and his two accomplices each received three-month sentences.

b. There is reason to believe that any individual possessing a sufficient amount of cash can purchase his freedom at any level of the penal system in Vietnam. At the time of initial apprehension the price is fairly moderate, depending on the crime committed. As the detainee advances to higher echelons the price naturally goes up until the individual is actually imprisoned, at which time the environment is less professional

CONFIDENTIAL

and the administrators lower level and less greedy so again the price for release is decreased. To illustrate, in Cai Lan District, Dinh Tuong Province, this evaluator interviewed a former suspect who spent six months in the provincial jail, without trial, because he could not produce the amount of money needed to gain release. Since he was from a poor family he was unable to produce the 5,000\$VN that the district chief had demanded for his release, or the 10,000\$VN asked by the Deputy Province Chief for Security. The only charge that could be brought against the suspect was that he had been conscripted by the VC and had escaped after two days. The man was released after six months but was denied an ID card for 14 months and was constantly harassed by the District Chief's flunkys.

c. One insight into the graft that is present in provincial jails was found in Darlac Province. The warden for this prison receives 26\$VN per prisoner per day as food allowance. When MEDCAP personnel gained entrance to the prison to treat the inmates, it was reported that nearly all those prisoners who had served six months or more were suffering from malnutrition. In Hue, where the prison warden receives 24 \$VN for the same purpose, the inmates were well fed and healthy.

d. The average district headquarters does not have the capability to house, feed, interrogate or transport large numbers of VCS. In Truong Duc District, Quang Nam Province, in January 1967, this evaluator was involved in an operation that detained some 224 men and women, among which there were known VC. Within six hours after the detainees had been turned over to the district chief, he had summarily released over 50% of the detainees. This was due largely to the fact that he had no food for the prisoners, and also that he did not want to be bothered. One of the

CONFIDENTIAL

CONFIDENTIAL

individuals released, the VC District Commander's wife, had been interrogated initially by this evaluator, revealing information pertinent to the operation in progress.

e. The District Chief of Hoai Khon District, Binh Dinh Province, destroys the dossier on all VCS as soon as he releases them. Consequently, there are no records of detention when these individuals are picked up a second or third time and the district chief cannot be held liable for illegal use of his office if he should be investigated.

f. The generally poor methods of handling prisoners not only lend themselves to graft but have also resulted in a sympathetic attitude toward VCS, among those who are responsible for their detention, especially national policemen. As was explained by LTC Tin, Province Chief, Quang Nam Province, the policeman usually is from an income bracket not far above that of the detainee. Aware that his prisoner may be locked in a cell for months before he is sentenced or released, and that the prisoners family may have no other means of support, the policeman is often receptive to a "tale of woe". In many cases he will release the detainee on the spot for no remuneration or, at most, for a few hundred piastres.

g. (c) CONCLUSIONS AND RECOMMENDATIONS: The following conclusions and recommendations are those of the field evaluator and are submitted for information and whatever action is considered appropriate by the command and/or agencies concerned.

a. Conclusions:

(1) There is great need by US/PVMAF units and advisors, and the GVN at all levels for specific instructions which will institute

CONFIDENTIAL

CONFIDENTIAL

uniformity and tighten control in civil defendants processing.

(2) Due to the lack of definitive guidance to the field, corrupt officials, fear of reprisal and poor supervision by commanders, large numbers of VC are released.

(3) Full advantage is not being made of information possessed by those individuals detained due to the lack of a uniform system of handling by both the GVN military and US combat units which would ensure maximum utilization by all interested echelons of command.

(4) The III MAF Combined Interrogation Center does not use a combined (US/GVN) tactical screening process. Though it is highly advantageous to have Americans who speak Vietnamese, no American can speak the language well enough to take full tactical advantage of his subject.

(5) There are insufficient numbers of Vietnamese interrogators at district and province level.

(6) District and Province Chiefs have the authority to release suspects without informing either the capturing unit or a higher authority.

(7) The three judicial systems that are responsible for action on civil defendants generally are adequate in concept. However, the Military Field Courts are not present in sufficient numbers.

(8) Unless a civil defendant is very important, and it is publicly known that he has been detained, it is possible for any defendant to bribe his way out of legal processing or a detention facility.

(9) There is no minimum sentence for a convicted saboteur, or terrorist.

CONFIDENTIAL

CONFIDENTIAL

(10) Indiscriminate grants of amnesty for large numbers of prisoners are detrimental to the national security.

(11) There is a need for additional prison facilities to hold civil defendants.

b. Recommendations:

(1) That CORDS/ICEY publish a directive containing specific instructions for all levels of command on the proper procedures and techniques of detainee handling. Such instructions should prescribe a uniform system for processing detainees, depending on the kind of prisoner and the offense. The system should also require strict accountability for provinces (ICEY).

(2) That CORDS advisors at all levels keep informed of detainee/civil defendant processing. A method which might serve as a model is the CORDS III CTZ draft directive which would require all PSA's to maintain a file on each individual apprehended, to include:

- (a) Time and date of apprehension and by which organization.
- (b) Date (s) of investigation/interrogation and by which organization.
- (c) If appropriate, date and reason for release from investigation.
- (d) Date investigation completed and to which judicial system the detainee was forwarded, or other disposition.
- (e) Previous record.
- (f) Action taken by the court or other legal elements and sentence (if any) imposed.
- (g) If the legal body releases the suspect, the reason for such release (before, during or after the legal processing). The

CONFIDENTIAL

CONFIDENTIAL

implementation of this paragraph is essential.

(h) If a sentence is imposed, the geographic location where it will be served.

(i) Whether the civil defendant is moved, released or transferred for any reason during the sentence. (P&P)

(3) That all major US detainee screening processes utilize Vietnamese interrogators. (J4)

(4) That district chiefs be denied the sole authority of release for civil defendants. (JAG)

(5) Additional facilities be built to handle adequately the vast number of detainees. (J4, ICEX/SID3)

(6) That a minimum sentence requirement be set for convicted saboteurs and terrorists. (PAD/USAID)

- 2 Incl
1. Annex A
2. VCS Processing Chart


JOHN G. LYERAND
Field Evaluator

CONFIDENTIAL

CONFIDENTIAL

PERSONNEL CONTACTED

BY CORPS

I CORPS

III MAF Hqs:	G-1, G-2, Interrogation Translation Team
I Corps Staff:	G-1, G-2 and Advisors
Quang Nam Province CORDS staff:	Province Chief and his appropriate staff officers

II CORPS

CORDS/LFFV staff

Appropriate Binh Dinh CORDS and province staff

Binh Dinh District S-2 and NP representative

Vietnamese officials; An Thu, Phu Cat, Tuy Phuoc and An Nhon Districts

LTC James Duffield (AID/FASA)

III CORPS

III Corps Staff:	G-1, G-2 (VN) and advisors
Long An Province:	Staff and advisors; 3d Bde 9th Div ITT officers
Thu Thua District:	Appropriate staff and advisors
Long Khanh:	District Chief; 4th Bn, 39th Inf, 1st Bde, 9th Inf Div

IV CORPS

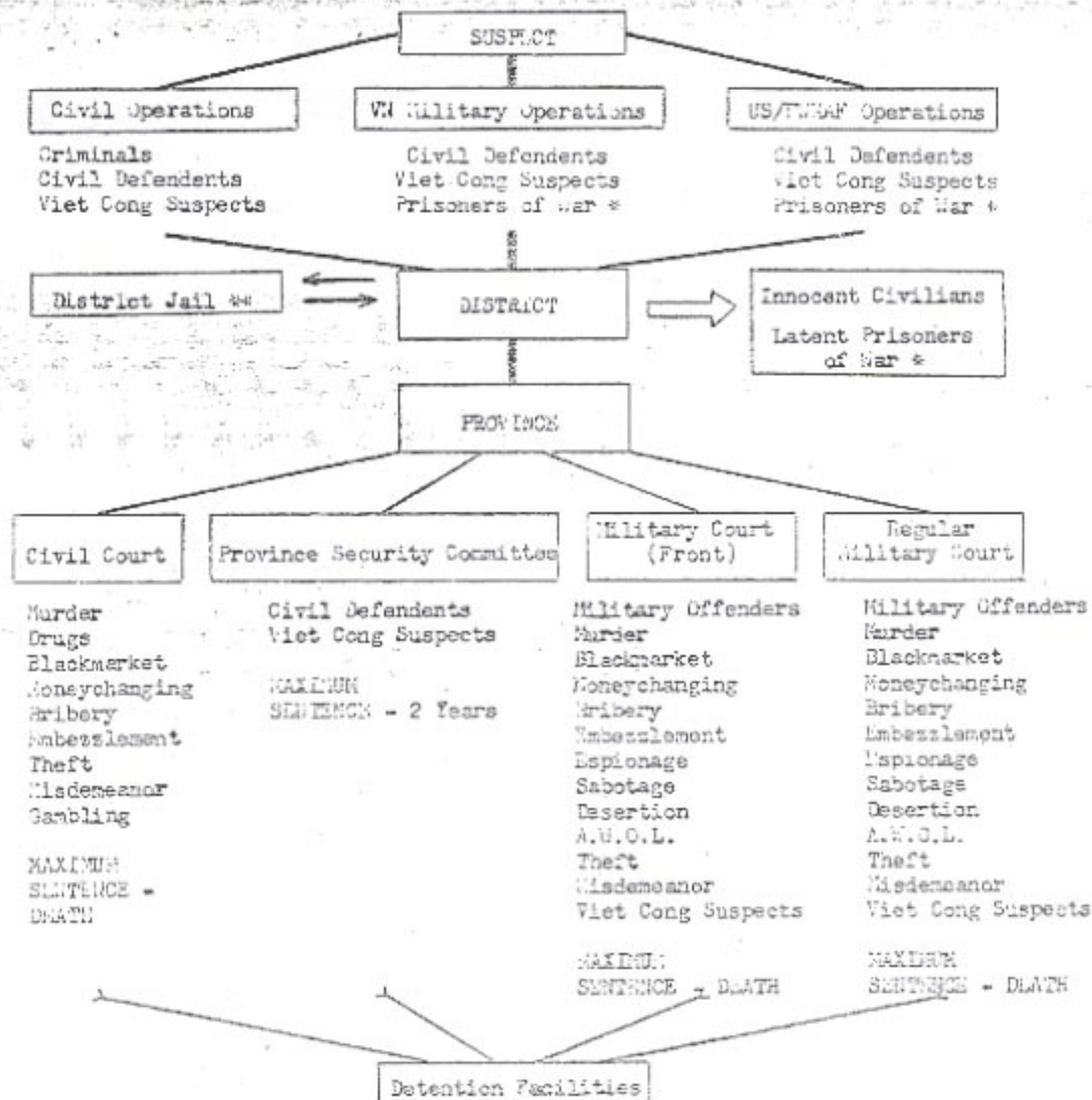
Vinh Binh Province staff and advisors

Cang Long District Chief and staff and advisors

Tien Can District Chief and staff and advisors

CONFIDENTIAL

CONFIDENTIAL



* POWs are processed in accordance to MACV Dir 20-5.

** Detainees at this level are awaiting arrangement for higher courts.

CONFIDENTIAL